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**IN THE
COURT OF APPEALS OF INDIANA**

SETH WEINGLASS,)	
)	
Appellant-Respondent/Plaintiff,)	
)	
vs.)	No. 53A01-0601-CV-23
)	
NOEL WILKINS, D.O. and)	
MARK CIANCONE, M.D.,)	
)	
Appellees-Petitioners/Defendants,)	
)	
and)	
)	
FADI RUAD HADDAD, M.D., BLOOMINGTON)	
HOSPITAL, INC. d/b/a BLOOMINGTON)	
HOSPITAL AND HEALTHCARE SYSTEMS,)	
INDIANA UNIVERSITY HEALTH CENTER,)	
TRUSTEES OF INDIANA UNIVERSITY and)	
JIM ATTERHOLT, Commissioner of the Indiana)	
Department of Insurance,)	
)	
Appellees-Third Party Respondents.)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Stephen R. Galvin, Judge
Cause No. 53C06-0510-PL-2007

September 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Seth Weinglass appeals the trial court's dismissal with prejudice of his proposed complaint for medical malpractice against Noel Wilkins, D.O., Mark Ciancone, M.D., Fadi Faud Haddad, M.D., Bloomington Hospital, Inc., d/b/a Bloomington and Healthcare Systems, Indiana University Health Center, and the Trustees of Indiana University (collectively, "Doctors"). Weinglass raises one issue, which we restate as whether the trial court abused its discretion by dismissing with prejudice Weinglass's proposed complaint for medical malpractice where his counsel failed to make a timely submission of evidence to the medical review panel.¹ We affirm.

The facts most favorable to the dismissal of the proposed complaint follow. Following an alleged medical negligence occurring in January through February 2003, Weinglass filed with the Indiana Department of Insurance his Proposed Complaint against the Doctors. On April 21, 2004, the parties agreed to the selection of attorney Douglass J. Hill as chairman of the medical review panel. On March 17, 2005, the last

¹ Specifically, it was alleged that Weinglass failed to comply with Ind. Code § 34-18-10-13(a) (1998) ("Medical Malpractice Act").

panel member was selected, and thereafter, Panel Chairman Hill sent a letter to the Indiana Department of Insurance certifying that the effective date on which the last panel member was selected was March 17, 2005.² Further, in a letter dated March 17, 2005, Hill outlined a Submission schedule to the parties, which stated in pertinent part:

The effective date of the last [panel member] selection was March 17, 2005, and therefore the panel's opinion is due by September 13, 2005.

In order to obtain the submissions for review by the panel in time for the panel to convene and decide the case prior to the deadline, I would like to suggest that the following schedule be followed:

May 6, 2005	-	Plaintiff's submission due
June 6, 2005	-	Defendant's submission due
June 21, 2005	-	Plaintiff's reply submission due

If any of you has any objection to the proposed schedule, please let me know. If I do not hear from any of you, I shall assume that the schedule is acceptable.

Appellant's Appendix at 22.

Weinglass did not object to the proposed schedule. In a letter dated May 19, 2005, Hill informed Weinglass's counsel that Plaintiff's submission was overdue and inquired as to when he could expect Weinglass's submission. Weinglass did not respond to Hill's letter until July 18, 2005, writing: "I apologize for not having my submission prepared by May 6, 2005. I expect the same no later than July 29, 2005." Id. at 25. In an August 25, 2005 letter, Doctors notified Hill that they had still not received Weinglass's submission. Furthermore, Doctors informed Hill, "we will not waive the 180-day Panel Opinion

² Pursuant to Ind. Code Section 34-18-10-13(a), the panel's opinion is due 180 days from the effective date.

deadline in this case.” Id. at 26. Thereafter, on August 29, 2005, Hill once again sent a letter to Weinglass stating in pertinent part:

My file shows that you had asked for an extension of time for Plaintiff’s submission to July 29, 2005, but I have not received that submission.

The opinion of the medical review panel in this case is due by September 13, 2005. You and your client are at risk of having this case dismissed if your submission is not received prior to that date. You will note that the Defendants will not waive that deadline

Id. at 27.

On September 12, 2005, one day prior to the 180-day deadline, Weinglass’s submission was served. Weinglass initially sent Chairman Hill his submission in full via expedited mail service and included a letter stating that Doctors’ counsel would be copied the same “via facsimile without enclosures and first class mail with enclosures.” Id. at 56. In a letter addressed to Doctors’ counsel, Hill stated that he received Weinglass’s submission on September 14, 2005, a day following the 180 day deadline and that, accordingly, Doctors’ submissions would be due on October 14, 2005.

Thereafter, Doctors filed with the trial court a motion for preliminary determination of law seeking dismissal of Weinglass’s proposed complaint based on his failure to comply with the Indiana Medical Malpractice Act in failing to timely file his submission. See Ind. Code § 34-18-10-13(a). In response, Weinglass filed a verified motion with the trial court in opposition to Wilkins’s motion to dismiss, arguing that his counsel’s “very active law practice” and his counsel’s two young children “to whom he also devotes much of his time” contributed to the delay in Weinglass’s submission.

Appellant's Appendix at 77. Additionally, Weinglass asserted that on the basis of Hill's August 29, 2005, letter, counsel for Weinglass believed he would be in compliance if Plaintiff's submission were served before September 13, 2005. However, Weinglass acknowledged that his counsel's particular circumstances "do not excuse the at-issue delay," but nonetheless, Wilkins's motion to dismiss should be denied because his submission was made before the deadline³ set by Panel Chairman Hill of September 13, 2005. Id.

The trial court held a hearing⁴ on Wilkins's motion for preliminary determination and motion to dismiss. On December 14, 2005, after taking the matter under advisement, the trial court granted Wilkins's motion to dismiss Weinglass's proposed complaint with prejudice.

The sole issue is whether the trial court abused its discretion by dismissing with prejudice Weinglass's proposed medical malpractice complaint for failure to comply with Indiana's Medical Malpractice Act. The Medical Malpractice Act provides a procedural framework in which a plaintiff can bring a proposed complaint for medical malpractice and have it reviewed by a medical review panel consisting of three doctors who rule on the complaint, and one attorney, who acts as chairman in the proceedings. See Ind. Code

³ Weinglass directs our attention to Panel Chairman Hill's August 29, 2005, letter to support his belief that Hill impliedly granted an extension of time in which Weinglass could file his submission. Hill's letter stated: "this case is due by September 13, 2005. You and your client are at risk of having this case dismissed if your submission is not received prior to that date." Appellant's Appendix at 27.

⁴ Though a hearing on Doctors' motion to dismiss was held on December 1, 2005, it was not recorded. Consequently, no record of the trial court's proceedings in the same was included in the parties' appendices.

§§ 34-18-8-1 to 34-18-10-26. The Act requires that the panel render its opinion within 180 days of the seating of the last panel member. Ind. Code § 34-18-10-13. The Act also authorizes the panel chair to establish a reasonable schedule for the submission of evidence to the panel. Ind. Code § 34-18-10-3(c). Furthermore, the Act specifically provides the trial court with the authority to impose appropriate sanctions, including dismissal of a proposed complaint, upon a party who, without good cause shown, fails to act in the manner required by the Act. Ind. Code § 34-18-10-14; Gleason v. Bush, 689 N.E.2d 480, 483 (Ind. Ct. App. 1997) (citing Jones v. Wasserman, 656 N.E.2d 1195 (Ind. Ct. App. 1995), trans. denied; Rivers v. Methodist Hosps., Inc., 654 N.E.2d 811 (Ind. Ct. App. 1995)).

The standard of review of a dismissal of a proposed complaint under Indiana's Medical Malpractice Act is whether the trial court abused its discretion. Gleason, 689 N.E.2d at 483. An abuse of discretion occurs only where the trial court's decision is against the logic and effect of the facts and circumstances before the court. Id. at 483-484; Benton v. Moore, 622 N.E.2d 1002, 1005 (Ind. Ct. App. 1993), reh'g denied. When reviewing a trial court's decision under an abuse of discretion standard, we will affirm if there is any evidence supporting the trial court's decision. Gleason, 689 N.E.2d at 484; Benton, 622 N.E.2d at 1005. Thus, once the trial court has held a hearing and determined to impose the sanction of dismissal for noncompliance with reasonable procedural requirements, "it is incumbent upon the plaintiff to demonstrate why the trial court should

have been required to rule differently as a matter of law.” Wasserman, 656 N.E.2d at 1197.

Here, Weinglass claims that the trial court, in making its decision to dismiss his proposed complaint, failed to apply to the instant facts the holding in Beemer v. Elskens, M.D., 677 N.E.2d 1117, 1119 (Ind. Ct. App. 1997), reh’g denied, trans. denied. In that case, Beemer’s submission was due by October 11, 1995, with the panel’s opinion to be due by January 17, 1996. Beemer, 677 N.E.2d at 1120. Beemer failed to meet either deadline and upon defendant’s motion for preliminary determination of law requesting dismissal of Beemer’s complaint, the trial court dismissed with prejudice Beemer’s proposed complaint. Id. at 1119. On appeal, this court held that the trial court abused its discretion by dismissing Beemer’s complaint because it failed to consider the entire record of facts and circumstances surrounding the particular case when determining whether dismissal was an appropriate sanction. Id. at 1120. Further, the Beemer court noted:

When the panel does not give its opinion within one hundred and eighty (180) days, the statute does not mandate dismissal or act as an absolute bar to litigants. Consequently, if a panel should be unable to comply with the one hundred and eighty (180) day time limitation because of [a] plaintiff’s failure to make a timely submission, that does not automatically trigger the imposition of sanctions on either parties or panel members. Instead, the panel must submit an explanation to the commissioner explaining the delay and attempt to expedite the process in a reasonable manner.

Id. at 1119.

As in Beemer, Weinglass similarly argues on that the trial court failed to consider the fact that his submission was filed in accordance with the panel chairperson's deadline and before the expiration of the 180-day term.

We agree with this court's decision in Beemer that noncompliance with the 180-day panel opinion deadline does not mandate an automatic dismissal or act as an absolute bar to litigants. However, as Beemer relates to the instant case, we do not find it to be compelling authority. In our decision of Gleason v. Bush, 689 N.E.2d 480 (Ind. Ct. App. 1997), we noted that, although the Beemer court set forth the appropriate standard upon which to review a trial court's decision to dismiss a proposed medical malpractice complaint, that court's application of the abuse of discretion standard was improperly applied. Id. at 484. "Rather than merely making a determination whether the trial court's decision was against the logic and effects of the facts and circumstances before the court and whether there was any evidence in support of the trial court's decision, it appears the majority in Beemer engaged in a reweighing of the evidence presented to the trial court and concluded that the trial court erred in dismissing the Beemers' proposed complaint." Id.

Upon review of the evidence in the instant case, we cannot say that the trial court abused its discretion when it dismissed Weinglass's proposed complaint. This court held in Gleason that based on a finding that plaintiff failed to show *good cause* for not making timely submission of evidence to the medical review panel within the 180-day time frame provided under the Medical Malpractice Act, dismissal of plaintiff's proposed complaint

was not an abuse of discretion. 689 N.E.2d at 483 (emphasis added). Similarly, we believe here, Weinglass failed to show the trial court good cause for not making timely submission of his evidence to the medical review panel.

The evidence indicated that Chairman Hill outlined a reasonable submission schedule providing each party with the opportunity to object to the schedule and stating that he would assume that the schedule was acceptable if he did not receive any objection. Despite the fact that Weinglass's counsel alleges that a "very active law practice" and his devotion to his two young children contributed to the untimely filing of Weinglass's submission, he failed to make any objection to Hill's submission schedule. Appellant's Appendix at 77. When counsel for Weinglass failed to file plaintiff's submission by the scheduled deadline, Hill sent a letter inquiring as to when he could expect Weinglass's submission. It was a month before Weinglass's counsel replied to Hill's inquiry, stating that he was sorry for not having plaintiff's submission prepared, but that Hill could expect the same by the end of the month, on July 29, 2005. Notwithstanding the fact that an extension of time was granted to Weinglass's counsel to file its submission, Weinglass's counsel failed to file the submission by the deadline they requested. In a second letter, Chairman Hill once again pressed Weinglass's counsel to file its submission and advised that Doctors had stated their unwillingness to waive the one hundred and eighty day deadline. A full month and a half past the new due date established by the time extension, Weinglass's counsel filed its submission to the panel. Thus, Weinglass's counsel filed plaintiff's submission only a day before the medical

review panel's 180-day deadline, by which its opinion was scheduled to have been rendered.

Weinglass's counsel was provided with plenty of opportunities to request extensions of time in which to file plaintiff's submission and was even granted an extension of time in which to file. Furthermore, the submission schedule outlined by Hill allowed sufficient time for the parties to make a full and adequate presentation of related facts and authorities. See Ind. Code § 34-18-10-3(c). It should not be a function or obligation of either the chairperson or the defendants named in a suit to have to continually press the plaintiff to make its submission in a timely fashion. As Judge Chezem stated in her dissent in the Beemer case: "[a]s the parties who brought the suit . . . [they] should have [] an interest in reaching a result in their case, not in causing delays. Instead of acquiescing to delays in our legal system, we should be fighting them." Beemer, 677 N.E.2d at 1121. Thus, in view of the aforementioned evidence, we cannot say that the trial court abused its discretion in dismissing Weinglass's proposed complaint.

For the foregoing reasons, we affirm the trial court's dismissal of Weinglass's proposed complaint for medical malpractice for failing to comply with Indiana's Medical Malpractice Act.

Affirmed.

ROBB, J. and BAILEY, J. concur